

1201 – CHILD PLACEMENT SERVICES

IV. PLACEMENT DECISION MAKING

Placement of children, in even the best placements causes emotional damage by adding to the children's experiences of grief, loss, anxiety and/or fear caused by the separation from their families and their home. Children's experiences of "home" certainly include their experiences with their parents, but also include their experiences with siblings, friends, pets, house, neighborhood, culture, hiding places, school, play, favorite toys, chores, and faith community. When children are removed from home, they are removed from all of these familiar things. Even if children have been living in a chaotic or violent environment, they may have developed skills to cope with that environment. Therefore, removal shall not be considered until reasonable efforts are made to meet children's needs for safety and nurturing in their own homes; unless no efforts are possible because children are at imminent risk of harm.

1. Shared Decision Making

Except in emergencies that threaten the child's safety, the county child welfare worker responsible for services to the family shall seek the consultation of other county child welfare agency staff and the county child welfare supervisor before removing the child from his or her home. A Child and Family Team (CFT) meeting must be convened when the county child welfare worker and county child welfare supervisor believe the child cannot be maintained safely in his or her own home under current circumstances. When county child welfare workers take children into agency custody in emergencies, the responsibility to use a shared decision-making process remains. The county child welfare worker shall call a Child and Family Team meeting on the next working day to review and evaluate the decision.

2. Relative Notification

When the decision has been made to remove a child from parental custody, Fostering Connections to Success and Increasing Adoptions Act of 2008, P.L. 110-351 (<http://www.gpo.gov/fdsys/pkg/PLAW-110publ351/pdf/PLAW-110publ351.pdf>) requires county child welfare agencies to exercise *due diligence* to notify all close adult relatives of the child(ren) (including any other adult relatives suggested by the parents) within 30 days of the child's removal from the parent of the options to participate in the care and placement of the child(ren).

Notification to relatives is subject to exceptions due to family or domestic violence. The intent of this part of the legislation is to ensure adult relatives of children under the care and supervision of county child welfare agencies are given the consideration and opportunity to be placement resources and/or to be able to participate in the child's care plan.

For the purpose of this section, *due diligence* means those efforts that are reasonably likely to identify and provide notice to adult relatives and fictive kin suggested by parents, as well as adult maternal and paternal, grandparents, aunts, uncles, siblings, all parents of a sibling where such parent has legal

custody of such sibling, relatives and other persons with legal custody of a sibling, great grandparents, nieces and nephews. Per Federal law, individuals are considered siblings of a child even if termination or disruption of parental rights, such as death, has occurred. Efforts to notify include, but are not limited to:

- Interviewing the child and the child's parents or caretakers about the child's relatives and their preferences for placement.
- Using family decision-making meetings such as Child and Family Team (CFT) Meetings and Team Decision Making (TDM) Meetings to ask participants to help identify other relatives of the child.
- Contacting identified relatives and requesting names of other relatives, divulging only information necessary to help identify additional relatives and assess their interest in accepting placement of the child or providing connections.
- Accessing internal county agency databases such as child welfare and child support.
- Utilizing internet based search tools including social media.

This legislation strengthens North Carolina's current laws and policies as they relate to relatives. Relatives are the placement of preference for children in care, per N.C.G.S. § 7B-505

(http://www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_7B/GS_7B-505.html).

In keeping with family-centered practice, the county child welfare agency should inform parents of the requirement to notify relatives beyond those they have identified. Parents may be able to provide necessary background and history of these relatives to assist the county child welfare agency in determining their suitability. In situations of family or domestic violence, it may not be appropriate to notify such relatives if it is deemed that it would pose a risk to the child or caretaker. If after a thorough assessment of domestic violence, the county child welfare agency deems that it is not in the child's best interest to contact a relative or fictive kin, then the justification should be thoroughly documented in the case file.

3. Notification Requirements

The Federal law lists specific requirements that shall be included in the notification to relatives. At a minimum the relative notification shall:

- Specify that the child has been removed from the custody of the parent,
- Explain the options the relative has under Federal, State, and Local law to participate in the care and placement of the child(ren),
- Explain the options that may be lost by failing to respond to the notice,

Change # 03-2016

Placement Decision Making

December 2016

- Describe the requirements to become a licensed family foster home,
- Describe the services and supports that are available for children in a licensed family foster home, and
- Describe how the relative guardians of the child may receive kinship guardianship assistance payments, if the county child welfare agency has elected to offer such payments.

To this end county child welfare social workers will find the following suggested tools helpful to provide notice to relatives. The sample DSS-5317 Relative Notification Letter (<http://info.dhhs.state.nc.us/olm/forms/dss/DSS-5317.pdf>) and the DSS-5316 Relative Interest Form (<http://info.dhhs.state.nc.us/olm/forms/dss/DSS-5316-ia.pdf>) should be sent together to identified relatives and fictive kin as they complement each other. The county child welfare worker may include the DSS-5318 Relative Search Information Form (<http://info.dhhs.state.nc.us/olm/forms/dss/DSS-5318-ia.pdf>) tool with the Relative Notification letter to obtain additional relative information. The “Relative Search Information” tool may also be used by the county child welfare social worker to document relative information for the case file. County child welfare agencies may choose an alternate format to notify relatives; however, it must include the minimum criteria listed above to ensure compliance with the Federal law.

Although the requirement to notify relatives is within 30 days of the county child welfare agency assuming legal and physical custody of the child, relative notification is an ongoing process. Upon receipt of the Relative Interest Form, county child welfare workers should follow up with relatives to discuss their desires and options in becoming resources for children. Documentation shall include these efforts. Relatives who demonstrate ambivalence should receive support from the county child welfare agency to assist them in determining their level of interest and commitment.

Additional relatives and fictive kin may be identified or come forward later in the case and should be afforded the same information and notification as those relatives identified earlier in the case.

The county child welfare agency may also determine that it is appropriate to notify identified relatives and fictive kin prior to assuming legal custody of a child. County child welfare worker skills should be utilized to obtain parental consent to notify relatives prior to the child being removed from parental custody. In addition to the case record documentation, P.L.113-183 requires agencies to provide documentation at each permanency planning hearing of the “intensive, ongoing, and, as of the date of the hearing, unsuccessful efforts made by the county child welfare agency to return the child or secure a placement with a fit and willing relative (including adult siblings), a legal guardian, or an adoptive parent, including through efforts that utilize search technology (including social media) to find biological family members for children”.

A. Practice Guidance: Decision Making About Placement, Reunification, and Best Interest of the Child

1. Reunification

The primary consideration for the child(ren)'s return home should be whether the child(ren) can be assured of at least a minimally sufficient level of care. Society requires that parents provide this level of basic care and the county child welfare agency has been given the legal authority to intervene when that level of care is not provided. Reunification should occur when the safety issues have been alleviated and risk has been reduced. This can be assessed utilizing good supervision, preparation with the family, and the DSS-5227 Family Reunification Assessment (<http://info.dhhs.state.nc.us/olm/forms/dss/DSS-5227-ia.pdf>).

2. Effects of Placement on Children

County child welfare workers should understand the effects of placement on children and keep these concerns in mind at each decision point in the county child welfare agency's involvement with the family:

- Children coming into foster care are victims of some type of trauma. This trauma is usually complex because it was caused by the adults who should have been caring for and protecting the child. The system can add to that trauma because each new traumatic event compounds the last. Trauma affects the development of a child. Developmental delays and behavior problems may be related to trauma.
- Grief is a persistent issue for children and families who have been disrupted. Grieving takes energy. For children in placement, the energy they use in grieving takes away from developmentally normal behavior.
- Within functional families, parents help children learn to make choices from available options--helping them to make the connection that each choice affects future choices. When the environment shifts in a seemingly random manner, children feel powerless and without options. Confusion, anger, and alienation can occur.
- Children learn who they are from their experiences within their family and from the continuity provided by their family. Children also learn how to have sustained relationships by being a member of a family. When children lose their connections to their family, they lose a part of themselves, and may begin to doubt that stable relationships are possible. With each move, the loss children experience increases.
- The development of self-esteem requires a sense of permanence and a sense of identity. Permanence brings a sense of security, belonging, loving, and being loved. It is difficult to develop a positive sense of self in a world that constantly shifts.

Change # **03-2016**

Placement Decision Making

December 2016

- The child's "best interest" is always connected to the goal of permanence. A permanent home assures commitment and continuity in a child's life. Efforts to achieve a permanent home for a child may not succeed, but agencies have the responsibility to search out viable permanent options for every child.

B. Choosing the Best Placement Resource

A placement resource shall be chosen for the child that ensures that the child is placed in the least restrictive, most family-like setting available and in close proximity to the parent's home consistent with the safety and best interest, as well as the strengths and specific needs of the child. Interstate placements shall comply with the Interstate Compact on the Placement of Children (ICPC). County child welfare agencies are required to:

- Consider in state and out-of-state options when making reasonable efforts to place the child in accordance with the permanent plan and to finalize the permanent plan.
- Consider in state and out-of-state permanent placement options at permanency planning hearings. If a child is in an out-of-state placement at the time of the hearing, the permanency planning hearing must determine whether the out-of-state placement continues to be appropriate and in the child's best interests.

The county child welfare agency shall arrange for and maintain a single, stable living arrangement for each child based on the needs and attachments of the child. Efforts should focus on matching a child's strengths and needs with potential placement options and their ability to meet the child's needs. This placement shall be within his or her community.

A child will be moved only when it is in his or her best interest and there are clear indicators documented to support the necessity of the move. Documentation shall reflect diligent efforts made to maintain a single placement in the child's community or reasons why this is not possible

Carefully choosing the best placement resource is critical to the goal of one single, stable, safe placement within the child's own community.

1. Placement with Relatives and Fictive Kin (Kinship Care)

MRS and System of Care principles instruct county child welfare agencies to acknowledge and support the importance of the family in meeting the needs of its members. When children cannot be assured safety in their own homes, the best alternative resource can often be found within the extended family and other kin. Kinship is the self-defined relationship between two or more people and is based on biological, legal, and/or strong family-like ties. Parents and guardians facing the risk of child placement shall be given a reasonable opportunity to identify and come together with their network to plan for and provide safety, care, nurturing, and supervision for the child. The county child

welfare agency has the responsibility of assessing the suggested resource to ensure the child will receive appropriate care.

When a county child welfare agency becomes involved in a family, informal kinship supports may not exist and the family may be too embarrassed or angry to seek such support. For instance, during a Child Protective Services Assessment, the parent may choose and arrange for a Temporary Safety Provider for his or her child(ren) in order to protect the child from further harm. County child welfare agency staff may need to help the Temporary Safety Provider locate and develop support and resources needed in caring for the child. In addition, the county child welfare agency shall remain involved with the family until the child's ongoing safety is assured and the child can return home; the placement is legally secure; or until the county child welfare agency files a juvenile petition requesting custody of the child(ren). These informal arrangements are NOT legally secure for the child or for the caretaker.

According to policy, county child welfare agencies shall not close a CPS Assessment unless the child can safely return to the care of a parent or court involvement is required. It is critical that this be made very clear when working with relatives during a CPS Assessment at the time of the Initial Provider Assessment.

If the county child welfare agency files a petition for abuse, neglect and/or dependency and obtains a nonsecure custody order, the county child welfare agency can recommend custody be given to the Temporary Safety Provider or Kinship Care Provider at disposition. Adoption Assistance would be an option later because the child was in the custody of a county child welfare agency, though briefly, if the relative or fictive kin chooses to adopt.

During the first conversations with relatives or fictive kin about having the child(ren) placed with them, either by the parent with county child welfare agency involvement, or by the county child welfare agency through court order, it is critical that county child welfare agencies thoroughly consider and have a thorough discussion about all options with the provider.

This should occur during the Initial Provider Assessment and Comprehensive Kinship Assessment, as well as on an ongoing basis when changes in the planning occur. In this manner, the provider can make informed decisions.

a. Child and Family Team Meeting

A Child and Family Team meeting is a way to engage and collaborate with all the people who surround a family and to support the family in building a support network that will eventually sustain it after the case is closed. It is the responsibility of the county child welfare worker and/or facilitator to assure that the ideas of the family and the natural supports will be considered with the same weight as those of the professionals in the room.

Family members contribute knowledge and wisdom about family resources, concerns, history, relationships, and culture. They provide long-term involvement. Their role at a Child and Family Team meeting is to create a plan for safety, permanence, and well-being that works for them and can be approved by the county child welfare agency.

b. Legal Preference for Placement with Relatives

County child welfare agencies shall strive to strengthen and preserve the family. In keeping with Federal law, North Carolina law and policy require that when a juvenile must be removed from his or her home, the county child welfare agency director shall give preference to an adult relative or other kin when determining placement, provided that:

1. The placement is assessed by the county child welfare agency to be in the best interests of the child(ren) in terms of both safety and nurturing; and
2. The prospective provider and the living situation are assessed and determined to meet relevant standards.

The juvenile court is required to ask at each hearing, including nonsecure custody, adjudication, disposition, review, and permanency planning, whether a relative is willing and able to provide proper care and supervision for the child(ren). If so, the juvenile court is to order placement with that relative if the home is assessed to be appropriate.

When relatives and fictive kin are identified as potential kinship care providers for children in care, the county child welfare agency shall assess the suitability of those resources. Custody or guardianship with a relative may be considered as the primary plan and/or as an alternative permanent plan if the primary plan of reunification is not achieved or is inappropriate.

The county child welfare social worker shall address the issue of available and appropriate relatives in each court report. The county child welfare social worker shall respond to the relative notification interest forms received by the county child welfare agency and include this information in documentation and in the court report. The status of kinship care assessments shall be included in documentation and the court report.

When necessary and appropriate to the needs of the child, the county child welfare agency shall make efforts to provide or procure reasonable assistance to help relatives and fictive kin meet assessment and/or licensing standards so that they can provide care for the child.

Whenever possible, child support should be collected from the parent(s) involving IV-D Child Support Enforcement. Potential kinship care providers shall be informed of available agency resources, such as

Child-Only Work First funds, Child Only Medicaid, childcare, and food and nutrition services benefits. When needed, families shall also be informed of any available community resources for free or low-cost clothing or furniture, minor home repairs, or other such incidental needs that may unnecessarily prohibit their being approved to provide care for children. If the kinship care provider wishes to be licensed as a foster parent, the county child welfare agency is required to determine whether the family meets state licensing requirements¹; thus enabling them to receive foster care board payments and other benefits. Since foster care placement, even with licensed relatives, is not a permanent plan, the kinship care providers should be assessed for their interest and ability to adopt the child, to assume guardianship, or to assume or legal custody.

c. Utilizing the Family's Own Resources

System of Care and the family centered principles of partnership expect that county child welfare social workers should use the resources of the formal child welfare system to strengthen and support rather than replace the informal system.²

Kinship care providers should be valued and treated as partners with the birth family and the county child welfare agency. This includes notifying relatives providing care for a child of any court review or hearing to be held about the child and of their opportunity to be heard in court

Children who have been abused, neglected, and/or rendered dependent do not respond appropriately to corporal punishment, since often they have already experienced and survived extreme discipline from their parents. Kinship care providers may not be aware of the impact of abuse, and may be reluctant to agree to a non-corporal punishment policy. The agency shall discuss and formalize a child-specific alternative discipline plan for children in the custody of a county child welfare agency.

County child welfare workers should use family-centered practice tools, such as Child and Family Team meetings, which focus on a mutual sharing of information among agency staff, other professionals, the family, and the network. Families, along with the kinship network, should be fully involved in the decision-making process from the point of initiation of services so that the resources and wisdom of the family and its culture can be tapped. The family's understanding incorporates a historical perspective of the problems faced by the family, as well as the efforts to remedy those problems. They are in a position to confront the problems and to help provide realistic supports needed to help the child and his or her family of origin move toward healing.

¹ Miller v. Youakim, 440 U.S. 125 (1979)

² Gleeson, *Ibid.*, page 13.

Child and Family Team meetings provide a model for engaging the network at the earliest stages of county child welfare agency involvement.

The county child welfare agency engages with the members of the network and shares responsibility for planning. This model helps the family, the relatives, and other kin to take ownership of the family's needs; to bring their own resources to address those needs; to reduce the likelihood of child placement outside the kinship network; and to provide a system of oversight to the family's progress in the resolution of the issues.

Please refer to Chapter VII - Child and Family Team Meetings (<http://info.dhhs.state.nc.us/olm/manuals/dss/csm-55/man/CSVII.pdf>) or the Community Assessment Teams information within Chapter IV; Section 1201; Children's Services Yellow Pages Tools for Enhanced Practice (<http://info.dhhs.state.nc.us/olm/manuals/dss/csm-10/man/CSs1201cYP.pdf>) to for additional information.

d. Kinship Care Assessment: Licensure and Approval

In order to maximize the possibility of a positive kinship placement, a thorough assessment shall be conducted to evaluate the suitability of the placement. Please refer to the Initial Provider Assessment (DSS-5203) and Kinship Care Comprehensive Assessment (DSS-5204). It is critical that the county child welfare agency develop and nurture staff sensitivity to the unique issues that are present when relatives and other kin are assessed for their suitability to parent children. Assessment should be based on an understanding of the kinship family's culture and community, child rearing approaches, and family dynamics, and should focus on the ability of the family to meet the immediate and ongoing needs of the child.³

If a placement is determined to be suitable for the care and nurturing of the child, but the home cannot meet all licensing requirements, the county child welfare agency may submit justification for a waiver to the licensing authority.

In North Carolina, many licensure requirements may be considered for waiver if approval is in the best interest of the child(ren); if the health, safety and protection of the child is assured, and if the county child welfare agency recommends that the waiver(s) be granted.

At this time, there are no waivers for training requirements, for well inspection requirements, or for placement of outside toilet facilities. Any relative or other kinship caregiver should be licensed if they want to be licensed and meet licensing requirements.

³ Child Welfare League of America., Kinship Care: A Natural Bridge, 1994, Washington, D.C. p.44.

Change # 03-2016

Placement Decision Making

December 2016

In addition to completing the Initial Provider Assessment (DSS-5203) and Kinship Care Comprehensive Assessment (DSS-5204), county child welfare agency staff shall maintain sufficient contact with the kinship care provider and the child to assure that the basic physical and emotional needs of the child are being met and that the kinship care provider is receiving adequate informal and formal support to meet those needs. County child welfare social workers shall have face-to-face contact with the kinship care provider at least once within the first week of placement and at least monthly thereafter.

If the county child welfare agency has custody and has sanctioned placement with a non-licensed relative, services should be provided to assure that the kinship care provider has the best chance of meeting the child(ren)'s needs for physical and emotional security. Kinship care providers may need agency supportive services. Some services that are frequently requested by kinship care providers are:

- Relative or “grandparent” support groups open to all kinship care providers regardless of age;
- Assistance negotiating the system to get approved for food and nutrition services benefits, Work First funds, Medicaid or state supported insurance coverage for the child, child support, or childcare services; and
- Information and referral services to connect with informal and formal service providers in the local community.

2. Non-Relative Placement Resources

If a relative cannot be identified as an appropriate placement resource for the child, a foster care placement shall be chosen for the child that ensures that the child is placed in the least restrictive, most family-like setting available and in close proximity to the parent's home consistent with the best interests and special needs of the child.

Foster care placement resources shall be carefully evaluated and prepared prior to placement to help assure that the child will remain in that placement until reunification or other permanent plan is achieved. Every child deserves one single, stable placement within his or her own community. If the county child welfare agency is relieved of reunification efforts, the foster family is frequently the first alternative for permanent placement through adoption. Concurrent planning requires that the county child welfare agency develop a viable alternative permanent plan that can be implemented if the primary plan is determined to be inappropriate. Please refer to the Concurrent Permanency Planning information found within Chapter IV; Section 1201; Children's Services Yellow Pages Tools for Enhanced Practice (<http://info.dhhs.state.nc.us/olm/manuals/dss/csm-10/man/CSs1201cYP.pdf>) for additional information.

a. Foster Care Placement Resources Include:

- A foster family home or group home supervised by the county child welfare agency and licensed by the NC Department of Health and Human Services;
- A child-caring institution which is licensed or approved by the NC Department of Health and Human Services and that is in compliance with Title VI of the Civil Rights Act;
- A foster care facility that is under the auspices of a licensed or approved private childcare or child placing agency. Such foster care facilities must be licensed by the NC Department of Health and Human Services and be in compliance with Title VI of the Civil Rights Act;
- A foster care facility that is licensed by the NC Department of Health and Human Services as a public or private group home and that is in compliance with Title VI of the Civil Rights Act;
- A foster care facility located in another state. The child's placement must have been approved in compliance with the Interstate Compact on the Placement of Children (ICPC). The other state must agree to supervise the child and the facility must be in compliance with Title VI of the Civil Rights Act and must be licensed or approved by that state;
- A therapeutic home that is a residential facility primarily located in a private residence that provides professionally trained parent substitutes and is licensed by the NC Department of Health and Human Services;
- A licensed residential treatment facility that provides a structured living environment for children and adolescents who are primarily mentally ill and who may also be multi-handicapped and for whom removal from the home is essential to procure appropriate treatment;
- A licensed residential therapeutic camp that is a residential treatment facility provided in a camping environment which is designed to help individuals develop behavior control, coping skills, self-esteem, and interpersonal skills; or
- A school or institution operated by the NC Department of Health and Human Services;
- An unlicensed home, including the home of a relative, that is approved by the court and designated in the court order.

b. Special Considerations for Children Under Twelve Years of Age

Placement of children under 12 years of age in group care should only be considered after other less restrictive and/or more family-like options have been seriously pursued. Residential/group care should only be used when it clearly meets the well-being needs of the child and no other family setting is available for that child. North Carolina's goal is for every child to be placed in a family setting and to have the opportunity to remain in his or her own community.

Key issues to consider when making placement decisions include:

- Will the child (ren) be in close proximity to their parents and close relatives?
- Will siblings be together?
- Does it allow for frequent visitation between children and their parents and siblings?
- Does it preserve connections of children in foster care with extended family, community, cultural heritage, religion and schools?
- Have relatives been sought as potential placement resources?
- Does it promote the relationship between children and their parents while the children are in foster care?

There appears to be two general issues given as reasons for placing children under twelve in group care. They are: 1) Keeping siblings together. 2) Meeting the specific needs of the child. In many of these placements, a sibling group are not placed together at all, but rather in different cottages that are not even close together. It is important to consider the specifics of the situation when placing children in group care. The amount of time the siblings will actually be together and the ages of the children should all be carefully considered. If the primary reason for placing the children in group care is to keep siblings together, agencies shall continue to seek the least restrictive placement option for the siblings if their needs can be met in a family foster home. Children should not be placed in residential/group care unless there is a clear need to do so, based on the specific needs of the child.

It is especially concerning when children are placed in group home care solely due to a lack of available foster homes. When this is the case, the county should develop a plan to address the need for recruiting and licensing new foster homes, as well as to support and maintain current foster homes.

3. Siblings

Siblings shall be placed together, whenever possible, unless contrary to the child's developmental, treatment, or safety needs. Through the eyes of the child, it is traumatic to be removed from parents and home. To be separated from siblings adds to the impact of loss and trauma. When siblings are able to remain together in an out-of-home placement, there can be a greater sense of continuity

of family. Frequently older children will have had some responsibilities for caring for younger siblings when in their own home, and they may feel worried and protective regarding these siblings if separated from them. Likewise the younger siblings may have looked to their older siblings for comfort and guidance.

Because it is important to place siblings together, the county child welfare agency shall recruit and prepare foster families who are willing to take sibling groups. Foster families need special preparation regarding issues of sibling relationships among children in foster care, as well as the impact of separation and loss on those relationships.

There are times when it is not in the child's best interest to be placed with siblings because of each child's developmental, treatment, and/or safety needs. In some situations, for example, children may be endangered by unsupervised contact with their more aggressive or sexually active sibling.

When this is the case, it is the responsibility of the county child welfare agency to provide for frequent supervised or unsupervised visitation and ongoing contact for the siblings in order to maintain their ties to one another. County child welfare workers shall document the basis for the decision not to place siblings together.

C. Maintaining One Single, Stable Foster Care Placement

The county child welfare agency shall arrange for and maintain a single, stable living arrangement for each child preferable within the child's own community. A child will be moved only when it is in his best interest and there are clear indicators to support the necessity of the move. Documentation shall reflect diligent efforts made to maintain a single placement in the child's community or reasons why this is not possible.

Placement providers should be carefully selected and well prepared based on child(ren)'s needs, as well as the ability of the provider to meet those needs. The county child welfare worker must provide consistent and ongoing support to the placement provider and facilitate the resolution of problems that occur when the child(ren) is placed in a that home. Placement providers should also be valued as partners with the county child welfare agency and family in providing for the best interests of the child(ren). Placement providers that are actively involved in the planning for the child(ren) are better prepared to provide a stable placement and often become the best permanent option for children if reunification is unsuccessful.

The county child welfare agency should have a plan to manage placement disruptions and should document and record disruptions in both the child's record and in the placement provider's record. This record can provide valuable information as to what kinds of behaviors a particular provider cannot handle. This analysis can guide future placement decisions, as well as identify training needs of the placement provider. One of the best tools to manage placement disruption is to plan for placement supports such as regular and consistent respite care. The county child welfare worker should have sufficient contact with the placement provider to know when conditions exist that could lead to disruptions. Intensive Family Preservation Services, as available, are also a resource for preventing placement disruptions.

When a Child Protective Services report involves an allegation against a placement provider, there shall be a Safety Assessment completed by the county child welfare agency responsible for the CPS Assessment to determine the safety of the child in that placement and to all other children in the care of the provider. Prior to the case decision, children shall be removed from the foster home only when the Safety Assessment indicates that the child is unsafe. (Refer to Family Services Manual, Chapter V, Jurisdiction in Child Welfare).

E. Special Legal Considerations in Placement Decision Making

1. Multiethnic Placement Act of 1994 and Amendment (MEPA-IEP)

All state and county agencies that use federal funds must comply with the Multiethnic Placement Act of 1994 as amended by the Interethnic Adoption Provisions of 1996 (<http://info.dhhs.state.nc.us/olm/manuals/dss/csm-50/man/appendixp.pdf>). The Multiethnic Placement Act is designed to “prevent discrimination in the placement of children in foster care and adoption on the basis of race, color, or national origin; decrease the length of time that children wait to be adopted; and facilitate the identification and recruitment of foster and adoptive parents.” The Act prohibits states or agencies that receive federal funds from delaying or denying the placement of any child based on race, color, or national origin. Further, any consideration of race or ethnicity must be done in the context of individualized needs of the child, with the rationale specifically documented in the placement record. A county child welfare agency may not rely on generalizations about the needs of children of a particular race or ethnicity, or on generalizations about the abilities of prospective parents of one race or ethnicity to care for a child of another race or ethnicity. Any violation of MEPA-IEP will be deemed a violation of Title VI of the Civil Rights Act (<http://www.justice.gov/crt/title-vi-1964-civil-rights-act>).

The primary purpose of the Multiethnic Placement Act is to find permanent homes for foster children in a timely basis. The best strategy for full compliance with the Act is a comprehensive recruitment strategy that targets the public and specifically targets those communities that reflect the racial and ethnic diversity of the county child welfare agency's foster care population.

All state and county agencies using federal Title IV-E funds must comply with MEPA as amended by the Interethnic Adoption Provisions of the Small Business Job Protection Act of 1996. The amendment requires that race, culture or ethnicity may not be used as the basis for any denial of placement, nor may such factors be used as a reason to delay any foster or adoptive placement. Agencies, therefore, are prohibited from delaying or denying foster and adoptive placements based on race, color or national origin. MEPA also requires agencies to honor birth parent's request for placement options unless it is contrary to the best interest of the child(ren). Training shall be offered to all in consideration of licensing.

MEPA-IEP specifically provides that it has no effect on the Indian Child Welfare Act.

2. Indian Child Welfare Act of 1978

The Indian Child Welfare Act of 1978 established nationwide procedures for the handling of American Indian child placements and authorized the establishment of American Indian child and family service programs. The act requires specific actions on behalf of a child who is a member of a federally recognized American Indian Tribe, Aleuts, or members of certain native Alaskan villagers. Whenever it is suspected that a child may fit into any of these populations, the procedures outlined in this Act shall be followed.

a. Definition of Terms in This Act

American Indian: An American Indian is defined as any person who is a member of an American Indian tribe or who is an Alaskan Native and a member of a Regional Corporation as defined in the Alaska Native Claims Settlement Act (<http://www.gpo.gov/fdsys/pkg/STATUTE-85/pdf/STATUTE-85-Pg688.pdf>).

American Indian Child: An American Indian child means any unmarried person who is under 18 and is either (a) a member of an American Indian tribe; or (b) is eligible for membership in an American Indian tribe and is the biological child of a member of an American Indian tribe. Tribes determine their own standards for membership eligibility.

American Indian Tribe: Any American Indian tribe, band, nation, or other organized group of American Indians recognized as eligible for the services provided to American Indians by the Secretary of the Interior because of their status as Indians, including any Alaskan Native villager as defined in section 3(c) of the Alaska Native Claims Settlement Act.

American Indian Child's Tribe: An American Indian child's tribe is defined as (a) the American Indian tribe in which an American Indian child is a member or eligible for membership or (b) in the case of an American Indian child who is a member of or eligible for membership in more than one tribe, the Indian tribe with which the American Indian child has the most significant contacts.

American Indian Reservation: American Indian country as defined in Section 1151 of Title 18 (<http://www.gpo.gov/fdsys/pkg/USCODE-2012-title18/pdf/USCODE-2012-title18-part1-chap53-sec1151.pdf>), United States Code and any lands, not covered under such section, title to which is either held by the United States in trust for any American Indian tribe or individual subject to a restriction by the United States against alienation.

The Act applies to American Indian child custody proceedings and includes:

- Foster care placement when the parent or custodian cannot have the child returned on demand (as in Voluntary Placement Agreements) but where parental rights have not been terminated;
- In termination of parental rights proceedings;
- In pre-adoptive and adoptive placements; and
- Proceedings regarding juvenile court assigned custody or guardianship of the person of the juvenile.

The Act does not apply to a placement based on an act which, if committed by an adult would be deemed a crime (as in any situation in which a child was adjudicated delinquent and placed in foster care or a group home), or upon an award, in a divorce proceeding, of custody to one of the parents.

The only Federally recognized tribal grounds in North Carolina are those of the Eastern Band of the Cherokee (<https://nc-chokeee.com/>). Public Health and Human Services is the agency of the Eastern Band of the Cherokee that handles the cases that involve the Indian Child Welfare act. If there is belief that the child is a Cherokee Indian child, contact Public Health and Human Services at P.O. Box 666 Cherokee, North Carolina 28719 or (828) 359-6180. This agency can assist in checking with the enrollment office to determine whether the child is an "Indian child." If the child is an "Indian child," then Public Health and Human Services will be the representative of the Tribe that will be involved in the case.

Members of other federally recognized tribes live and work in North Carolina and are afforded the protections of this Act. The Bureau of Indian Affairs (BIA) (<http://www.indianaffairs.gov/>) has a listing updated each year of the appropriate tribal person to receive questions about membership and ICWA proceedings.

b. State Recognized Tribes

While the Indian Child Welfare Act only protects members of federally recognized tribes, children in state recognized tribes merit similar consideration. N.C.G.S. § 143B-139.5A (http://www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_143B/GS_143B-139.5A.html) was enacted in 2001 to support collaboration between the Division of Social Services, the North Carolina Directors of Social Services Association, and the Commission of Indian Affairs. The goal of this legislation is to create relationships so tribes can receive reasonable notice when American Indian children are placed in

the legal custody of county child welfare agencies or for adoption; recruitment of North Carolina American Indians as foster and adoptive parents can be increased; and training on American Indian culture and history can be provided to county child welfare social workers, as well as foster and adoptive parents.

N.C.G.S. § 7B-505(c)

(http://www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_7B/GS_7B-505.html) was added in 2013 to provide changes to the placement of children while in nonsecure custody. It enacted a new subsection to expand types of placements available to a child in nonsecure custody by identifying individuals who may not be relatives but have a substantial relationship with the child. These individuals are defined as “non-relative kin”. It also gives additional placement options for American Indian children who are members of a state recognized tribe by defining non-relative kin to include members of state or federally recognized tribes regardless of the relationship with the child. One purpose of this change is to allow placement of children from state recognized tribes with American Indian families when in their best interest, given that state tribes are not protected by ICWA. This change also encourages these placements be made at the onset of the case and only when the placement is in the child’s best interest.

It is important to remember that the Multi Ethnic Placement Act (<http://info.dhhs.state.nc.us/olm/manuals/dss/csm-50/man/appendixp.pdf>) applies to the placement of American Indian children who are not covered by ICWA. When considering placement for any American Indian child, every effort should be made to involve the tribal community in planning for the child in a setting that reflects his or her American Indian culture.

The North Carolina Commission of Indian Affairs (<http://www.doa.nc.gov/cia/>) (919-807-4440) is a good resource for counties who are working with American Indian children and families. The North Carolina Commission of Indian Affairs provides a web site that lists North Carolina Tribal Communities with their contact information (<http://ncadmin.nc.gov/citizens/american-indians/nc-tribal-communities>). The Commission can help in regard to local tribes and can also facilitate contact with tribal leadership for tribes located in other parts of the country.

The North Carolina Tribes include:

- Coharie Tribe (<http://www.coharietribe.org/>) (Harnett and Sampson Counties);
- The Haliwa-Saponi Tribe (<http://haliwa-saponi.com/>) (Halifax and Warren Counties);

North Carolina Division of Social Services
Child Welfare Services
1201 – Child Placement Services

Change # 03-2016

Placement Decision Making

December 2016

- The Lumbee Tribe of North Carolina (<http://www.lumbeetribe.com/>) (Hoke, Robeson, and Scotland Counties);
- The Meherrin Indian Tribe (<http://meherrinnation.org/index2.html>) (Hertford County);
- Occaneechi Band of Saponi Nation (<http://www.occaneechi-saponi.org/>) (Alamance and Orange Counties);
- Sappony (<http://www.sappony.org/index.htm>) (Person County); and
- Waccamaw-Siouan Tribe (<http://www.waccamaw-siouan.com/>) (Bladen and Columbus).

The North Carolina Tribal Organizations include:

- The Cumberland County Association for Indian People (Fayetteville);
- The Guilford Native American Association (Greensboro);
- Metrolina Native American Association (<http://www.metrolinanativeamericans.org/>) (Charlotte); and,
- Triangle Native American Society (<http://www.tnasweb.org/>) (Raleigh).

c. Procedures

ICWA specifies that tribal courts have exclusive jurisdiction of children who reside on the reservation. If the child is a ward of a tribal court, but does not reside on a reservation, the jurisdiction of the case must be transferred to the tribal court. In any action leading to a foster care placement or in any termination of parental rights action affecting an American Indian child who does not reside on the reservation, the parents, guardian or custodian of the child may petition for transfer of jurisdiction to a tribal court.

At any time during proceedings of a foster care placement, the American Indian custodian and American Indian tribe have the right to intervene in the proceedings at any time. Tribal courts have the same authority as any State court and any decisions made by them that follow the ICWA guidelines have the effect of any other court decision.

As in any other proceedings, the parents of the child (ren) must be notified of the pending foster care proceedings. However, the parent, American Indian custodian and American Indian tribe must be informed by registered mail, return receipt requested, of the proceedings and of their right to intervene at any point in the proceedings. The notice must include the following information:

- The name of the American Indian child and tribal affiliation;

North Carolina Division of Social Services
Child Welfare Services
1201 – Child Placement Services

Change # 03-2016

Placement Decision Making

December 2016

- Name and address of the petitioner and petitioner's attorney;
- Location, mailing address and telephone number of the court;
- Statement of right of American Indian custodian and tribe to intervene and petition for transfer to tribal court;
- Statement that if the parent or American Indian custodian is unable to afford counsel, the court will appoint counsel;
- Statement that the parent, custodian or tribe may request 20 days to prepare for the proceeding;
- Statement of the potential legal consequences of an adjudication on future custodial rights of the parent or American Indian custodian; and
- A statement that the proceeding is confidential and should not be revealed except to authorized tribal members.

Parents and American Indian custodians have the right to a court-appointed lawyer in custody proceedings whenever indigence is a factor and the court may appoint an attorney for the child to ensure that his or her interests are protected.

If the county child welfare agency is unable to locate the parent, American Indian custodian, or cannot determine the American Indian tribe, then the county child welfare agency must notify the Secretary of the Bureau of Indian Affairs at the appropriate office by registered mail, return receipt requested, of the child's pending court proceedings. There is no provision for service by publication. The Secretary has 15 days after receipt of this notice to inform the parent, American Indian custodian and American Indian tribe of the foster care proceedings. Under ICWA, "parent" does not include the unwed father where paternity has not been acknowledged or established.

For North Carolina proceedings, BIA notice should be sent to Gloria York, Indian Child Welfare Services, BIA Regional Office, 545 Marriot Drive, Suite 700, Nashville, TN 37214 (615) 564-6740. The BIA Eastern Region stretches from Maine to Florida and west to eastern Oklahoma. Parents have ten days beyond the 15-day period before any foster care proceeding can take place. However, the parent, American Indian custodian or the tribe may request and be granted up to a 20 day extension to prepare for the proceedings. Thus county child welfare agency may have to ask the court to continue a seven day or other hearing to comply with ICWA. If ICWA requirements are not met, the tribe, American Indian custodian or parent can move to vacate the proceeding and begin again.

d. Special Provisions

Though procedures for obtaining legal custody and placement responsibility of an American Indian child are similar to those regarding any other child, there are some major differences. For instance, all county child welfare agencies must demonstrate to the court that “active” efforts were made to maintain the child in his or her own home. In the case of an American Indian child, the county child welfare agency must also specifically detail what remedial efforts and rehabilitative programs were provided to the family to keep it intact and how these efforts were unsuccessful. These efforts take into account the social and cultural conditions of the tribe and use the resources of the extended family, tribe, and American Indian social service agencies. Thus, active efforts can be more extensive than reasonable efforts. In addition, the county child welfare agency must prove by clear and convincing evidence, that staying in the home would result in serious emotional or physical damage to the child. That finding must be based on testimony from a “qualified expert witness” who is, in priority order;

- (1) A member of the child’s tribe recognized by tribe knowledge in tribal custom,
- (2) A lay expert witness with substantial experience in the delivery of family services to American Indians and knowledge of tribal child rearing practices, or
- (3) A professional person having substantial education and experience in his or her specialty. The BIA can assist in identifying a qualified expert witness, if requested to do so by a party or the court. If foster care placement is to be made using State laws, each party to the case has the right to examine the documents filed with the court which serve as the basis of a decision by the court. In addition, the county child welfare agency must demonstrate that it has offered remedial services to maintain the child with the family and that these efforts have failed.

e. Choosing a Placement

Whenever placement is contemplated for a child who may be eligible for the Indian Child Welfare Act, the placement must be the least restrictive setting which most approximates a family and in which his or her special needs, if any, may be met. The child must also be placed within reasonable proximity to his or her home. Placement resources for the child should be chosen based on the following preferences:

- A member of the American Indian child's kinship network;
- A foster home licensed, approved, or specified by the American Indian child's tribe;

- An American Indian foster home licensed or approved by an authorized non-American Indian Licensing authority; or
- An institution for children approved by an American Indian tribe or operated by an American Indian organization which has a program suitable to meet the American Indian child's needs.

Good cause to deviate from these preferences exists if the parents or child "of sufficient age" so request or the extraordinary needs of the child require another placement or no families meeting the preference criteria can be found after a diligent search.

These procedures pertain to initial foster care placements of American Indian children. ICWA contains other procedures relating to termination of parental rights and adoption.

f. Voluntary Placement Agreements under the ICWA

For children that fall under the special provisions of the Indian Child Welfare Act, DSS-1789 Voluntary Placement Agreements (<http://info.dhhs.state.nc.us/olm/forms/dss/dss-1789-ia.pdf>) between the county child welfare agency and parent or guardian have additional requirements.

A Voluntary Placement Agreement will not be considered valid unless the agreement is signed before a judge of competent jurisdiction and is accompanied by a judge's certificate stating that the terms and conditions of the agreement were fully explained and understood by the parent or American Indian custodian of the child. The certificate must also state that the parent or American Indian custodian had the agreement explained either in English or through an interpreter in a language that the parent or American Indian custodian understood.

Any consent given prior to or within ten days of the birth of the American Indian child shall not be valid. At any time that the parent or American Indian custodian of the child requests that the child be returned, the county child welfare agency must return the child as in any other Voluntary Placement Agreement. If the county child welfare agency feels that the child would be harmed, then it must petition the Court ensuring that all of the rights and duties of a county child welfare agency are followed in relation to the American Indian child.

g. Termination of Parental Rights

To terminate parental rights, the state court must make the same findings as previously discussed, using expert testimony, but the likelihood of damage must be established beyond a reasonable doubt. For a case example where a county child welfare agency terminated the parental rights on an American Indian child following both North Carolina

and ICWA requirements, see In Re: Bluebird, 105 NC App 42 (1992). Absent good cause to the contrary, the child must be placed for adoption with a member of his or her extended family, other members of his or her tribe or other American Indian families.

E. Resources

The DSS-5291 Indian Child Welfare Act Compliance Checklist (<http://info.dhhs.state.nc.us/olm/forms/dss/DSS-5291-ia.pdf>) is an excellent resource to assist with navigating the many procedures to comply with ICWA and is available on the forms website. The DSS-5335 Consent to Explore American Indian Heritage (<http://info.dhhs.state.nc.us/olm/forms/dss/dss-5335.pdf>) can be used if the parent/caretaker indicates he or she is a member of a state tribe or he or she believes he or she may have membership in a state tribe. The DSS-5336 Fostering Connections/Tribal Relative Search (<http://info.dhhs.state.nc.us/olm/forms/dss/dss-5336.pdf>) form may be used if there is no parent or guardian available and/or he or she is unwilling to provide information to the county child welfare social worker AND the county child welfare worker has information from some other source that the child may have tribal heritage. Both the DSS-5335 and DSS-5336 are to be used in all substantiated or services needed cases. County child welfare workers are already required to inquire about a parent/caretaker's state tribal ancestry, in addition to his or her federal tribal ancestry—if the parent says he or she does not have tribal heritage AND there is no other indication that the child may have tribal heritage, the county child welfare social worker does not need to use either form.